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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 368

SHEET METAL WORKERS' INTERNATIONAL UNION, AFL-CIO, LOCAL UNION 17, *Petitioner,*

v.

AETNA STEEL PRODUCTS CORPORATION, ET AL., *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

EDWARD J. HICKEY, JR.
WILLIAM G. MAHONEY
620 Tower Building
Washington, D. C. 20005

DONALD W. FISHER
741 National Bank Building
Toledo, Ohio 43604

JOSEPH F. FEENEY
114 State Street
Boston, Massachusetts

Attorneys for Petitioner

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit entered in the above-entitled case on April 20, 1966.

CITATION TO OPINIONS BELOW

The opinion of the District Court (R.[1] 133-140), printed in Appendix B hereto, *infra,* p. 3a, is reported in 246 F. Supp. 236. The opinion of the Circuit Court of Appeals, printed in Appendix B hereto, *infra,* p. 11a, is reported in 359 F. 2d 1.

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[1] Refers to Record Appendix filed by Petitioner in the Court of Appeals below.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on April 20, 1966. (R. 159). The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

QUESTIONS PRESENTED

Whether, pursuant to a national plan for settlement of jurisdictional disputes in the building and construction industry under which several lower boards of arbitration and an appellate arbitration board were established, an award of the appellate arbitration board is void when it exceeds the scope of the issues submitted to and adjudicated by the lower arbitration board.

STATUTE INVOLVED

The statutory provisions involved are Section 301 of the Taft-Hartley Act, 29 U.S.C. § 185 and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202. They are printed in Appendix A, *infra*, pp. 1a-2a.

STATEMENT

In the Spring of 1965, a jurisdictional dispute between the Sheet Metal Workers[2] and the Carpenters[3] occurred on a building project in Boston, Massachusetts, known as the John F. Kennedy Federal Office Building job. The general contractor, Bateson,[4]

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[2] Refers to Petitioner, Sheet Metal Workers' International Union, AFL-CIO, Local Union 17.

[3] Refers to Respondent, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Local Union 33.

[4] Refers to Respondent, J. W. Bateson Co., Inc.

awarded a sub-contract to Aetna[5] to furnish labor, material, and equipment for the installation of certain items fabricated of sheet metal. (R. 4). Aetna assigned all of the work under its subcontract to employees represented by the Carpenters. (R. 4). The Sheet Metal Workers claimed that part of the work should have been assigned to employees represented by their union.

All parties involved in the dispute, i.e.: The Sheet Metal Workers, the Carpenters, Bateson, and Aetna, through affiliation with international labor organizations or contractors' associations, are participants in a private contractual Plan for Settling Jurisdictional Disputes Nationally and Locally, pursuant to the provisions of which jurisdictional disputes are to be resolved through arbitration. The text of the Plan, which was adopted on February 2, 1965, is printed in Appendix C, *infra,* p. 22a. The Plan provides for resolution of jurisdictional disputes initially by one of four arbitration boards. For the nation as a whole, a nine-man National Joint Board for Settlement of Jurisdictional Disputes was created. In three large metropolitan areas, New York, Chicago, and Boston, the National Joint Board had no jurisdiction, however, and local boards of adjustment which had been in existence prior to the adoption of the Plan continued to exercise exclusive arbitral authority over jurisdictional disputes in their respective areas. Decisions or Awards of the National Joint Board and the three recognized local boards were made subject to review before a newly created tribunal with appellate arbitration jurisdiction known as the Appeals Board.

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[5] Refers to Respondent, Aetna Steel Products Corporation.

The Appeals Board was vested with authority under the Plan to prescribe rules as to the types of cases it would accept for review and, subject to approval by a committee of representatives of some of the signatory organizations, known as the Joint Negotiating Committee, to establish procedural regulations for the effective administration of the appeals procedure. (Appendix C, *infra,* p. 22a). In accordance with the authority granted under the Plan, the Appeals Board, on April 1, 1965, published a set of procedural Regulations the text of which is printed in Appendix D, *infra,* p. 32a. Regulation 1 provided in part:

> "An appeal may be filed from a job decision or a decision on a request for reconsideration, clarification or a decision following an oral hearing."

After Aetna made its disputed job assignment to the Carpenters, the Sheet Metal Workers filed a submission with the Boston Board on April 21, 1965, protesting "the employment of Carpenters, members of Local #33, on the installation of metal enclosures on metal venetian blinds pockets and convector covers." (R. 15). A hearing before the Boston Board, which the Carpenters did not attend, was held on April 27, 1965, and the following decision was issued:

> "The work in question, is the work of the Sheet Metal Workers." (R. 11, 17-18).

The Carpenters appealed the decision of the Boston Board to the Appeals Board on May 5, 1965, but the appeal was dismissed on the ground that it was not timely filed. (R. 6-7, 22-23). Aetna, thereafter, changed its work assignment in some respects, but not to the satisfaction of the Sheet Metal Workers.

This dispute over the correct interpretation or application of the Boston Board decision of April 27, 1965, led to a strike of the job site by the Sheet Metal Workers. (R. 8). While the strike was in process, the business manager of the Sheet Metal Workers, at the request of a representative of the general contractor, Bateson, went back to the Boston Board on July 20, 1965, accompanied by representatives of Bateson and Aetna, and asked for a clarification of the April 27 decision. The Boston Board, on the same day, issued a further decision stating:

> "All of the parties in interest be directed to comply with the April 27, 1965, decision of the Board." (R. 8-9, 23-24).

Aetna filed a timely appeal from the Boston Board decision of July 20, 1965, seeking clarification of the original April 27 decision. (R. 9, 24-25). The Carpenters joined in Aetna's appeal several days later and made the further request that the entire matter be reviewed by the Appeals Board for the purpose of eliminating problems and confusion created by the Boston Board and so this work may proceed without further interruption." (R. 9, 25-27).

The Appeals Board entertained Aetna's appeal, in which the Carpenters had joined and, on August 12, 1965, issued a decision in which it stated:

> "The Appeals Board in this decision has neither entertained an appeal from the decision of the Boston Board nor has it sought simply to interpret the decision of the Local Board of April 27 which the Local Board has refused to do. Some definitive action, however, is long overdue to determine how work shall proceed." (R. 32-33).

The Appeals Board then proceeded to make an entirely new work assignment as between the Sheet Metal Workers and the Carpenters, encompassing, in addition to the assignments placed in dispute by the Sheet Metal Workers in the April 27 submission to the Boston Board, items which neither the Sheet Metal Workers nor the Carpenters had submitted for arbitral resolution. The new work assignment made by the Appeals Board was as follows:

> "The unloading, distribution and installation of convector enclosures comprised of sills and front pieces and grills shall be assigned to the Sheet Metal Workers.
>
> "The unloading, distribution and installation of pipe enclosures, *curve window trim and base, filler pieces behind plaster columns,* venetian blind pockets, and *metal partitions* shall be assigned to the Carpenters." (R. 33). (Emphasis supplied.)

The Sheet Metal Workers protested the August 12 decision of the Appeals Board (R. 33-35) and a rehearing was granted on August 27, 1965. The decision on rehearing, issued on August 31, 1965, neither affirmed nor reversed the August 12 decision, and stated in conclusion:

> "The Appeals Board is anxious to have resolved by the Joint Negotiating Committee any question of its own authority, particularly during the formative period of its work. Accordingly, the Appeals Board requests that the Joint Negotiating Committee review the type of circumstances involved in the present situation and determine whether or not the Appeals Board may consider an appeal, once having declined to consider an appeal, in the face of subsequent developments of the sort outlined in the Factual Background above. The Appeals Board requests that the Joint

> Negotiating Committee make this determination at the earliest possible date." (R. 42).

The Joint Negotiating Committee to which the question "whether the Appeals Board may consider an appeal, once having declined to consider an appeal, in the face of subsequent development . . . ." was referred, has no authority under the Plan to interpret any Rules or Regulations promulgated by the Appeals Board or to revise any of its Rules or Regulations. Its sole authority over Appeals Board procedures is (1) to *approve* rules as to the types of cases the Appeals Board will accept for review and (2) to *approve* such procedural regulations as may be required for the effective administration of the appeals procedure. (Appendix C, *infra,* p. 27a).

The Sheet Metal Workers filed suit in the District Court on September 10, 1965, seeking confirmation of the Boston Board decision of April 27; vacation of the Appeals Board decision of August 12; and certain other relief not material to this Petition.

The District Court at the hearing on the Sheet Metal Workers' motion for a temporary injunction dismissed the complaint, apparently on the theory that it raised procedural questions, which, within the framework of the Plan, were to be determined by the Appeals Board itself or the Joint Negotiating Committee.

On appeal, the Court of Appeals affirmed the District Court, and, with respect to the issue raised in this Petition, held that inasmuch as the August 12 decision of the Appeals Board adjudicated issues that were within the scope of its general authority to review jurisdictional dispute decisions of the lower arbitration tribunals, it had the authority to resolve a

dispute "by using a broader lens than that provided by the parties", i.e.: by resolving issues not specifically submitted by the parties at the lower arbitration tribunal level. (Appendix B, p. 19a, *infra*).

REASONS FOR GRANTING THE WRIT

The decision of the court below has decided a federal question in a way in conflict with applicable decisions of this court in *United Steelworkers of America* v. *American Manufacturing Co.*, 363 U.S. 564 and *United Steelworkers of America* v. *Enterprise Wheel and Car Corp.*, 363 U.S. 593.

The August 12 decision of the Appeals Board awarded work assignments for the unloading, distribution, and installation of curve window trim and base, filler pieces behind plaster columns, and metal partitions when none of these items had been disputed or litigated before the Boston Board in the Sheet Metal Workers original submission on April 21, 1965, or at any other time. The Boston Board never had an opportunity to determine whether the work assignments referred to belonged to employees represented by the Sheet Metal Workers or the Carpenters or neither of them.

Article II, Section 5, of the Plan, which created the Appeals Board, provides that the Appeals Board "is empowered to review and decide any appeal from a decision or ruling of the National Joint Board or a Local Board recognized under Article IV (New York, Chicago and Boston)." The Appeals Board's own procedural regulations provide that appeals may be filed "from a job decision or a decision on a request for reconsideration, clarification, or a decision following an oral hearing."

The Appeals Board plainly can review or readjudicate on appeal claims presented at the National Joint Board or Local Board level, but it is equally clear that it has no jurisdiction under the Plan to Adjudicate claims that have never been asserted at the lower level. When the Appeals Board in its August 12 decision awarded work assignments over curve window trim and base, filler pieces behind plaster columns, and metal partitions, it plainly was attempting to act in the capacity of a tribunal of original jurisdiction rather than an appellate tribunal. This was openly conceded by the Appeals Board itself when in the decision of August 12 it stated that it "has neither entertained an appeal from the decision of the Boston Board nor has it sought simply to interpret the decision of the Local Board of April 27. . . ."

The Court of Appeals below agreed that the Appeals Board decision of August 12 dealt with issues not presented by the parties, but felt that this was proper in the circumstances, just as "appellate courts have power, on occasion, to note issues beyond those presented by the parties, in the interest of doing justice. . . ." (Appendix B, pp. 19a-20a, *infra*). It is submitted that this analysis is irreconcilable with pronouncements of this court.

In *United Steelworkers* v. *Enterprise Wheel & Car Co.*, 363 U.S. 593, 597, the court said;

> "Nevertheless, an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not set to dispense his own brand of industrial justice. . . . When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award."

In *United Steelworkers* v. *Gulf & Warrior Nav. Co.*, 363 U.S. 574, 582, the Court indicated that it was always open to judicial inquiry whether the reluctant party, "did agree to give the arbitrator power to make the award he made", because:

> ". . . arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit."

The federal judiciary is impressed with the duty under Section 301 of the Taft-Hartley Act to fashion a body of federal arbitration law "from the policy of our national labor laws." *Textile Workers Union* v. *Lincoln Mills,* 353 U.S. 448, 456-457. There is no doubt that the national labor laws favor the settlement of private labor disputes through voluntary arbitration channels, and, as the Court made evident in *Wiley* v. *Livingston,* 376 U.S. 543, a claim must be submitted to arbitration if its arbitrability is at least arguably supportable.

The corollary to the proposition of encouraging the *submission* to arbitration of all but the most plainly non-arbitrable claims, however, is the doctrine articulated by this Court to the effect that awards rendered must be confined to the issues submitted by the parties in the arbitration agreement and in conformity with the general authority vested in the arbitrator thereunder. Any other rule would convert the arbitration process into a game of chance in which none of the parties would know until the award was rendered what rights and what issues would be determined. Such a state of affairs would be chaotic. It would lead to mistrust and, ultimately, to disuse of the arbitration process in labor disputes.

The holding of the Court of Appeals below with respect to the latitude permitted an arbitrator in the name of "creative adjustment" is irreconcilable with with the expression of this Court in the *American Mfg. Co.* and *Gulf & Warrior Navigation Co.* cases, *supra,* regarding the limitations on the power of labor arbitrators. Its erroneous ruling on this important issue should be corrected forthwith because federal courts in the First Circuit and other Circuits, as a result of the decision below, may, and probably will, fail to apply proper criteria in cases seeking to enforce or set aside labor arbitration awards, and, thus, fail to carry out the national labor policy respecting arbitration.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

EDWARD J. HICKEY, JR.
WILLIAM G. MAHONEY
620 Tower Building
Washington, D. C. 20005

DONALD W. FISHER
741 National Bank Building
Toledo, Ohio 43604

JOSEPH F. FEENEY
114 State Street
Boston, Massachusetts

Attorneys for Petitioner

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